



Buckhannon: Raising Costs for Parents of Children With Disabilities

In *Buckhannon Board and Care Home, Inc. v. W. Va. Dep't of Health and Human Resources* (2001), the Supreme Court ruled that civil rights plaintiffs who settle their cases cannot recover their attorneys' fees, even if the defendant provides the remedy the plaintiffs sought. This has made it much more difficult for parents to enforce their children's IDEA rights. Congress should override *Buckhannon*.

- ◆ Ordinarily, under the IDEA, when parents prevail, they can recover their reasonable attorneys' fees. Many plaintiffs in civil rights cases like IDEA cases, cannot afford lawyers on their own and would be unable to pursue a case.
- ◆ Before *Buckhannon*, many parents could recover their attorneys fees if they settled their case, but their case was the catalyst for causing the school district to change. The vast majority of IDEA cases settle. But usually, before settlement there is a great deal of work by attorneys. Most cases take a lot of preparation; few plaintiffs can afford to pay their attorneys out of pocket for this.
- ◆ In *Buckhannon*, the Supreme Court ruled that plaintiffs cannot recover attorneys' fees if they settle unless the court enters an order affirming the settlement, such as a consent decree. Most settlements are by private agreement and because most hearing officers will not order consent decrees. This means that parents who settle must pay all of their own attorneys' fees.
- ◆ As a result, many parents are chilled from bringing cases under the IDEA even when their children's rights have been violated, since they often cannot recover attorneys fees if they settle. Parents without substantial financial resources have trouble finding attorneys.
- ◆ In some cases, school districts have taken parents through prolonged litigation, raising their costs, only to settle at the last minute. This leaves parents unable to pay substantial legal bills. Under *Buckhannon*, the school district can settle at the last minute—even in the middle of the hearing—and avoid reimbursing the parents for their attorneys' fees.
- ◆ *Buckhannon* has contributed to creating a vastly unlevel playing field for parents. It has upset the balance that Congress so carefully crafted to ensure access to a fair decision-making system. Congress should override it.

How Buckhannon Hurts Parents: One Family's Story

In one Massachusetts case, a young child with cerebral palsy faced severe learning issues the school district could not meet. The family went to a hearing to place the child in a private school program she needed. The district drove the parents' attorneys' fees up by repeatedly to provide documents, attempting to prevent experts from observing the program, and other means. The mother's settlement offers were rebuffed. The young child was forced to testify for half an hour using a communications device and was cross-examined by the school district for two hours. The next day, the district offered to settle and place the child in the requested private program. The parents had to pay all of their attorneys' fees and costs for the hearing. Even though they "prevailed" in their settlement, and got all that they requested, they could not recover attorneys fees from the school district. **Few parents can afford to pay such expenses. Almost 2/3 of children with disabilities live in families earning less than \$50,000 a year.**